IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 25600 of 2005(V)

OS.319/2000 OF MUNSIFF COURT, CHANGANACHERRY DTD. 05/08/2005.

PETITIONER:

RAJU.K.KURIAN,
AGED 55, S/O.KURIAN KORAH CHRISTIAN,
BUSINESSMAN, MANNOOPARAMBIL HOUSE,
THOTTACAD VILLAGE, CHANGANACHERRY TALUK,
KOTTAYAM DISTRICT.

BY ADV. SRI.VARGHESE C.KURIAKOSE,
SRI.P.J.ANTONY JOSEPH MARIADAS,
SRI.PRAVEEN K. JOY,
SRI.VARGHESE BABU.

RESPONDENTS:

1. **KORATHU ALIAS KUNJU,**
   CHRISTIAN, AGRICULTURIST,
   AGED 80, RESIDING AT CHELAMATTATHU HOUSE,
   THOTTACAD VILLAGE, THOTTACAD MURI,
   CHANGANASSERY.

2. **ZACHARIA, S/O.KORUTHU ALIAS,**
   KUNJUJUKUTTY, CHRISTIAN,
   BUSINESSMAN, AGED ABOUT 65,
   -DO- -DO-

3. **KORULLA, S/O.ZACHARIA @ MON,**
   CHRISTIAN, INSURANCE OFFICER,
   AGED 35, -DO- -DO-

W.P.(C). NO.25600/2005:

4. KURIAN, S/O. ZACHARIA ALIAS,
SABU CHRISTIAN, BUSINESSMAN,
AGED 33, -DO- -DO-

5. MANI, S/O.ZACHARIA ALIAS KOCHUMON,
CHRISTIAN, AGED 31, -DO- -DO-

6. ANTHRAYOSE, S/O.ZACHARIA ALIAS,
SAINU, CHRISTIAN, AGED 23, -DO- -DO-

BY ADV. SRI.T.R. HARIKUMAR FOR R3.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH J.

W.P.(C) No.25600 of 2005

Dated 9th August, 2007.

J U D G M E N T

Petitioner approached this Court aggrieved by Ext.P7 order passed by the Munsiff Court, Changanacherry. According to the petitioner, I.A.264/01 filed by him to set aside the commission report was pending and hence without passing orders on that, the suit should not have been posted for trial. It is also submitted that in any case, the application filed for a fresh inspection should have been considered by the court before the trial. Learned counsel for the respondents points out that only after closing the evidence and only when the case was posted for arguments, the application for a fresh commission was filed. It is seen from the order itself that though the petitioner who is the plaintiff had filed I.A.264/01, he had not adduced any evidence in that petition or sought for disposal of the same and accordingly, the interlocutory application was posted along with the suit. Guardedly the court has observed in the order that “The objections raised by the plaintiff against the commission report can be considered at the time of considering the evidence in the suit. The question

whether the present commission report was correctly and properly prepared by the commissioner can be considered in the light of the evidence adduced in the case especially in the light of other two commission reports..... and if the court is dissatisfied with the commission report, it is open to the court to set aside the commission report or remit the commission report to the commissioner and to obtain a fresh commission report." Thus it is clear that the interests of the petitioner have been safeguarded by the court. Therefore, the writ petition is disposed of directing the Munsiff Court, Changanacherry to proceed with the hearing of the case and if at the time of hearing, as observed in the order extracted above, appropriate action is to be taken in the matter, it will be open to the court to do the needful.

KURIAN JOSEPH, JUDGE.

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